IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

INCOME TAX REFERENCE No 41 of 1988

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH
and
Hon'ble MR.JUSTICE D.A.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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Versus

COMMISSIONER OF INCOME-TAX

Appearance:

1. INCOME TAX REFERENCE No. 41 of 1988
MR MJ SHAH for Petitioner No. 1
MR BB NAIK with MR MANISH R BHATT for Respondent No. 1

CORAM : MR.JUSTICE M.S.SHAH
and
MR.JUSTICE D.A.MEHTA

Date of decision: 04/10/2001

ORAL JUDGEMENT

(Per : MR.JUSTICE M.S.SHAH)

In this reference, four questions are referred

for our opinion in respect of assessment year 1979-80. While the first three questions are referred at the instance of the assessee, the last question is referred at the instance of the revenue.

2. We have heard Mr Manish J Shah, learned counsel for the assessee and Mr BB Naik, learned counsel for the revenue.

3. Both the learned counsel state that the controversies raised in the questions referred herein are concluded by the decision dated 28.8.2001 of this Court in Income-tax Reference No. 93 of 1987 in case of this very assessee. Following the said decision, we answer the questions as under :-

Question No. 1

Whether, on the facts and circumstances of the case, the Appellate Tribunal was right in law in holding that the disallowance is required to be made u/s. 40(c) out of the remuneration paid to the Managing Director notwithstanding the fact that the remuneration was reasonable having regard to the business requirements of the Company?"

Following the aforesaid decision in Income-tax Reference No. 93 of 1987, our answer is in the affirmative i.e. in favour of the revenue and against the assessee.

Question No. 2

"Whether, the Appellate Tribunal was right in law in holding that commission is required to be included while computing the disallowance u/s.40(c) ?"

Following the aforesaid decision in Income-tax Reference No. 93 of 1987, our answer is in the affirmative i.e. in favour of the revenue and against the assessee.

Question No. 3

"Whether, on the facts and circumstances of the

case, the Appellate Tribunal was right in confirming the disallowance of Rs.40,903/= invoking the provisions of section 37(5) of the Income-tax Act, 1961 ?"

Following the aforesaid decision in Income-tax Reference No. 93 of 1987, our answer is in the negative i.e. in favour of the assessee and against the revenue.

Question No. 4

"Whether, in law and on facts the assessee is entitled to the deduction of the royalty of Rs.36,969/- pad to Mettur Beardshell Limited ?"

Following the aforesaid decision in Income-tax Reference No. 93 of 1987, our answer is in the affirmative i.e. in favour of the assessee and against the revenue.

4. The reference accordingly stands disposed of with no order as to costs.

(M.S. Shah, J.)

(D.A. Mehta, J.)

sundar/-